

Panaji, 3rd February, 2022 (Magha 14, 1943)

SERIES II No. 45

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are five Extraordinary issues to the Official Gazette, Series II No. 44 dated 27-01-2022 as follows:—

- (1) *Extraordinary dated 27-01-2022 from pages 1083 to 1084 regarding Notifications from Department of Finance & Goa Legislature Secretariat.*
- (2) *Extraordinary (No. 2) dated 31-01-2022 from pages 1085 to 1086 regarding Notification from Department of Finance.*
- (3) *Extraordinary (No. 3) dated 31-01-2022 from pages 1087 to 1222 regarding Notification from Department of Elections.*
- (4) *Extraordinary (No. 4) dated 01-02-2022 from pages 1223 to 1224 regarding Notifications from Department of Finance and Order from Department of Home.*
- (5) *Extraordinary (No. 5) dated 02-02-2022 from pages 1225 to 1228 regarding Notification and Direction from Department of Elections.*

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Higher Education

Certificate

No. ACAD III/GC/Filling of Posts-Regular/98/
/2021/6588

Read: No. ACAD-III/GC/Filling of Posts-Regular/98/
/2021/5688 dated 22-12-2021.

Certified that the character and antecedents of Ms. Delilah Assumption Antao appointed to the post of Assistant Professor in English in Government College of Arts, Science and Commerce, Khandola-Goa (Group "A" Gazetted) under Directorate of Higher Education vide above referred Order has been verified by the Addl. District Magistrate, South Goa, Office of the Collector & District Magistrate, South Goa District, Margao-Goa and nothing adverse has been reported against her at Police Stations in Goa.

H. B. Khedekar, Under Secretary (Higher Education).
Porvorim, 28th January, 2022.

Certificate

No. ACAD III/GC/Filling of Posts-Regular/98/
/2021/6589

Read: No. ACAD-III/GC/Filling of Posts-Regular/98/
/2021/6140 dated 06-01-2022.

Certified that the character and antecedents of Ms. Vijaya Arjun Nemikal appointed to the post of Assistant Professor in Geography in Government College of Arts, Science and Commerce, Khandola-Goa (Group "A" Gazetted) under Directorate of Higher Education vide above referred Order has been verified by the Addl. District Magistrate, South Goa, Office of the Collector & District Magistrate, South Goa District, Margao-Goa and nothing adverse has been reported against her at Police Stations in Goa.

H. B. Khedekar, Under Secretary (Higher Education).
Porvorim, 28th January, 2022.

Department of Labour

Notification

No. 28/2/2021-LAB/Part-II/621

The following Award passed by the Industrial Tribunal Labour Court, at Panaji-Goa on 07-12-2021 in Ref. No. IT/27/2015 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor
of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 16th December, 2021.

IN THE INDUSTRIAL TRIBUNAL LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before Ms. Bela N. Naik Hon'ble
Presiding Officer)

Ref. No. IT/27/2015

The President,
GAAL Workers Union,
G-5, Macedo Appts.,
Tisk, Ponda – Goa. ... Workmen/Party I

V/s

1. M/s Goa Auto Accessories Ltd.,
Honda, Sattari – Goa. ... Employer/Party II(1)

2. The Chairman/MD,
GAAL Employees Consumer's
Cooperative Society,
C/o M/s. Goa Auto Accessories Ltd.,
Honda, Sattari – Goa. ... Employer/Party II(2)
Workmen/Party I represented by
Ld. Adv. Ms. Eruska Dias holding for
Learned Representative Shri P. Gaonkar.
Employer/Party II(1) and (2) proceeding
ex-parte.

AWARD

(Delivered on this the 7th day of the month
of December of the year 2021)

By Order dated 14-07-2015, bearing No. 28/14/
/2015-Lab/697, the Government of Goa in exercise of
powers conferred by Section 10(1)(d) of the Industrial
Disputes Act, 1947 (for short 'The Act'), has referred
the following dispute to this Tribunal for
adjudication.

“(1) *Whether there exists the employer-employee
relationship between M/s Goa Auto Accessories
Limited, Honda, Sattari, Goa and the following
six workmen employees in its canteen run
through the GAAL Employees' Consumers
Co-operative Society Limited, Honda, Sattari,
Goa ?*

(i)	Shri Vasudev Ganesh Gaude	—	Helper
(ii)	Shri Vinod Ramesh Kudtarkar	—	Waiter
(iii)	Shri Ganesh Shankar Parab	—	Cook
(iv)	Shri Mahadev Guno Naik	—	Cook
(v)	Shri Tukaram C. Gawas	—	Waiter
(vi)	Shri Harichandra S. Salelakar	—	Waiter

(2) *If the answer to the above issue No.(1) is in the
affirmative, then, whether the termination of the
services of above mentioned workmen with effect
from 20-02-2014, is legal and justified?*

(3) *If the answer to issue No.(2) above is in the
negative, then, what relief the workmen are
entitled to?”*

2. Upon receipt of the reference, it was registered
as IT/27/2015 and registered A/D notices were
issued to both the parties. Pursuant to service
of notices, Party I filed a Claim Statement at Exb.
5 and Party II(1) filed its Written Statement at
Exhibit 7 and Party II(2) at Exh.8.

3. In short, the case of the Party I/Workmen is that
they are working in the Factory canteen
established by the Party II(1) which is an
industrial establishment situated at Honda
Industrial Estate, Sattari-Goa and these
workmen are working continuously since the
time of joining the said canteen and in the
month of January, 2014, the Management of the
Party II(1) decided to close down the Factory
operation and as such the Management
terminated the services of the present six
workmen w.e.f. 10-02-2014. The Party I states
that the workers working in the Factory were
paid their legal dues such as the retrenchment
compensation, gratuity and other dues in
addition to ex-gratia amount i.e. 55 days per
day of the service and in view of the benefits
given to the workers in the Factory, these
workers also decided to demand the same
benefits to them but the Management refused
to pay them stating that these six workmen are
the workers of GAAL Employees Consumer
Limited.

4. The Party I states that the Goa Auto
Accessories Limited is a very big industrial
establishment and when it was established, the
Factory was employing more than 300 workers.
The wages and the other benefits such as the
uniforms were always given by the Party II(1)
whereas the earned wages were paid by the
Party II(1) through Consumer Society but their
Provident Fund was remitted in the Company
Code of the Party II(1) and all the expenses of
the canteen were paid by the Party II(1) through
the Consumer Society Limited. The overall
supervision of the canteen and overall control
was always done by the Party II(1) through their
Administrative and Human Resources
Department. That after the termination of their
services, the workers demanded their dues but

the Party II(1) refused to pay the same and the workers were not paid their legal dues through the consumer Society Ltd. i.e. Party II(2). Since the Employer refused to pay the legal dues, all the workers raised an industrial dispute through their Union vide letter dated 10-06-2014 before the Labour Commissioner, Panaji wherein the conciliation proceedings took place but due to the adamant attitude of the Employer, the matter ended in failure upon which the Government of Goa vide Order dated 14-07-2015 referred the matter for adjudication to the Industrial Tribunal. Hence, the Party I states that the Management failed to pay them the retrenchment compensation, notice pay, gratuity and other legal dues and hence the termination of their services is illegal, unjustified and bad in law. The Management has not complied with the provisions of Section 25 F, 25 FFF of the I. D. Act nor they have followed the principles of natural justice and hence it is prayed that the action of the Management in terminating their services w.e.f. 10-02-2014 be declared as illegal, unjustified and bad in law and they are entitled for full back wages from the date of termination till the date of payment of legal dues and other reliefs as prayed in the Claim Statement.

5. Party I states that at the time of termination of services, the Management failed to pay them the retrenchment compensation, notice pay, Gratuity and other legal dues and hence the termination is illegal, unjustified and bad in law and as the Management has not complied with the Section 25 F and 25 FFF of Industrial Disputes Act, 1947, their termination of employment is illegal, unjustified and bad in law and hence they are entitled for full back wages till the date of payment of legal dues and ex-gratia payment as paid to the other Factory workers. The Party I submits that after termination of their services they are unemployed.
6. The Party I therefore prayed that since the action of the Management in terminating their services effects from 10-02-2014, be declared as illegal, unjustified and therefore be set aside and quash the same and the workmen be granted relief of full back wages from the date of termination till the date of payment of their legal dues and ex-gratia @ 55 days of wages per year of services, in addition to the retrenchment compensation and gratuity.

7. In the Written Statement the Party II(1) states that the reference is not maintainable as the Appropriate Government has not applied its mind before making the reference and also for non-joinder of necessary Party, that there does not exist an employer-employee relationship between the workers named in the Order of Reference and the Party II(1). The Party I Union has no locus standi to raise the dispute on behalf of the workers of Party II(2), the workers whose names have been mentioned in the order of reference were not the members of the Party I Union at any time and the Party I Union has not authorized the President of the Party I Union to espouse the cause of the workers of the Party II(2).
8. The Party II (1) states that the employees of Party II(1) formed a Co-operative Society under the name and style of "Goa Auto Accessories Ltd. Employees Cooperative Consumer's Society Ltd/Party II(2) under registration No. CON-13//NZ/Goa, a Consumer Society with various aims and objects such as to run canteen, Hotel, Lodges, etc. and the Managing Committee of the Party II(2) approached the Party II(1) with a proposal to run a canteen for the welfare of the workers. The Party II(1) agreed to the proposal of the Party II(2) to run a canteen for providing subsidized food to the employees of Party II(1) w.e.f. 1986 and Party II(2) was required to run the canteen as a welfare measure under the Factories Act, 1948 however, there was no statutory obligation. It is stated that in order to manage and run the canteen as per the Contract, the Party II(2) employed employees as per its requirements and the Party II(2) had issued appointment letters to its employees as and when employed and the Party II(2) had control on its employees in the matter of working payment of wages, maintenance of records under the various labour laws, taking of disciplinary action and supervision of their work and the Party II(2) had covered its employees under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees Provident State Insurance Act, 1948 and Rules thereunder and had been remitting the contribution to the respective authority under the code number allotted to the Party II (2).
9. Party II (1) states that they had issued a notice dated 07-01-2014 of the stoppage of manufacturing activities of their Factory establishment and the manufacturing activities

of their Factory were thereafter closed w.e.f. 10-03-2014 and all the workers on the rolls of the Party II(1) were issued notices on 10-02-2014 and all the workers who were retrenched on account of the stoppage of manufacturing activities of the Factory were paid the earned wages of notice period, retrenchment compensation as required under the provisions of the I. D. Act, 1947. The Party II (1) states that the Party II (2) is a Society registered under the Co-operative Societies Act and is an independent establishment. After the stoppage of manufacturing activities of the Party II (1), the Party I Union raised an industrial dispute alleging illegal closure of the Factory of Party II(1) and the dispute was resolved and a settlement dated 11-03-2014 was signed in conciliation before the Commissioner, Labour and Employment and Conciliation Officer, Panaji and that under clause 4 of the said settlement dated 11-03-2014, the Party I Union had agreed to treat all the disputes pending before the different authorities concerning Charter of Demands, ex-gratia, wages, retrenchment, closure of manufacturing activities etc. as settled.

10. The Party II(1) states that the Party I were not the employees of the Party II(1) and as such Party II(1) had never claimed the dispute raised by the Party I on the stoppage of manufacturing activities of the Factory of the Party II(1) and the present dispute raised by the Party I Union is an afterthought and with mala fide intention to extract money from the Party II(1).
11. The Party II(1) states that the Party II(1) is not the Employer of the workmen of the Party II(2) nor have they terminated the services of the workers of the Party II(2) and the relationship of employer-employee does not exist between the Party II(1) and the Party I workers and hence submits that the reference as against the Party II(1) is not maintainable and no relief be ordered against the Party II(1). The Party II(1) denies that the Party II(1) has terminated the services w.e.f. 10-02-2014 of the six workmen mentioned in the order of reference and states that since the Party I employees were not the employees of the Party II(1), the Party II(1) is not liable to pay any dues to the Party I employees.
12. The Party II(2) in its Written Statement at Exhibit 8 stated that the employees of the Party II(1) had formed a Co-operative Society under the name and style as the GAAL Workers Consumer Co-operative Society Ltd. with

various aims and objectives and that on formation of the Party II(2) Society, the Party II(2) approached the Employer/Party II(1) with a request to permit them to run the canteen to provide better and cheaper food to the workmen and employees of the Employer/Party II(1) on payment of subsidized rates. The Party II(1) and Party II(2) accordingly started the canteen in the premises of the Party II(1) with the employees engaged and employed by the Party II(2) and that after entering into contract with the Party II(1) to run the canteen, engaged its own workforce and the Party II(2) had issued Letters of Appointment to all the employees appointed by the Party II(2). The Party II(2) had also covered its employees under the Goa Daman & Diu Shops and Establishment Act, 1973 and Rules thereunder, Employees Provident Funds and Miscellaneous Provisions Act, 1952, Goa Labour Welfare Act, Minimum Wages Act and such other labour laws applicable to the Party II(2) Society. The Party II(2) denies that the Party I workers were the members of the Party I Union at any time and also denies all the contentions of the Party I workmen and the Union made in the Claim Statement which are contrary to and inconsistent with the contentions of the Party II(2) and prays that they are unable to defend the case.

13. In the Rejoinder at Exhibit 9 the Party I denied the case put forth by Party II in the Written Statement.
14. Based on the above mentioned pleadings my Learned Predecessor has framed the Issues at Exh. 16 and the same are as follows:

ISSUES

1. *Whether the Party I proves that the action of the Management in terminating their services with effect from 10-02-2014 is illegal and unjustified?*
2. *Whether the Party I proves that the management failed to pay them retrenchment compensation, notice pay, gratuity and other legal dues and hence the termination of their services is illegal, unjustified and bad in law?*
3. *Whether the Party I proves that the management has not complied with the Section 25F and 25FFF of Industrial Disputes Act, 1947 and hence their termination of employment is illegal, unjustified and bad in law?*

4. *Whether the Party II(1) proves that reference is not maintainable as stipulated in Para 2 of the Written Statement?*

5. *What Relief? What Award?*

15. In the course of the evidence, the Party I examined its first witness Shri Puti Gaonkar and he has placed on record the copy of letter dated 10-06-2014 at Exh.19, the copy of notice dated 07-07-2014 at Exh. 20, the copy of notice dated 21-07-2014 at Exh.21, the copy of letter dated 21-08-2014 at Exh.22, the copy of letter dated 07-01-2014 at Exh.23, copy of minutes of conciliation dated 16-01-2014 at Exh. 24, copy of Failure Report dated 20-02-2014 at Exh. 25, copy of settlement dated 04-03-2014 at Exh. 26 and a copy of Provident Fund slip at Exh.27.
16. During cross-examination of this witness (Shri Puti Gaonkar), copies of communication from Provident Fund Commissioner dated 21-03-1997 informing them about allotment of Sub Code No. GOA/10061-C to Goa Auto Accessories Ltd, and similar communication dated 21-03-1997 allotting Sub Code No. GOA/MH/10061-B to Party II(2) is taken on record and marked at Exh. 28 Colly, a copy of the letter written to the Labour Commissioner electing the witness as the President of the Union is taken on record and marked as Exh. 29. Party I also examined its second witness Shri Vasudev Gawade after which they closed their evidence.
17. Party II(1) examined its witness Shri Viraj Dravid and he has placed on record the copy of Bye-Laws of Party II(2) at Exh. 34, copies of Appointment Letters issued to the employees of Party II(2) at Exh.35 Colly, Copies of Attendance records of employees of Party II(2) at Exh. 36 Colly, Copy of wage records of employees of Party II(2) at Exh. 37, Copies of EPF records of employees of Party II(2) at Exh.38 Colly, Copy of notice dated 07-01-2014 dated 07-01-2014 of stoppage of activities of Party II(1) alongwith annexures at Ex. 39 Colly, Copy of letter to the Party II(2) of termination of contract of Party II(2) at Exh. 40, Copy of registration certificate of Party II(2) with L.I. under Shops and Establishment Act and Rules at Exh. 41, Copy of settlement under Sec.12(3) dated 11-01-2013 at Exh. 42 Colly, Copy of letter to Labour Inspector, Bicholim for cancellation of registration certificate to Party II(2) at Exh. 43 Colly, copy of letter dated 25-09-2014 to Asst. Registrar of Co-op. Societies for cancellation of registration of Party II(2) at Exh.44, copy of letter dated 21-08-2014 to ALC, Mapusa by Party II(1)

at Exh. 45, copy of complaint dated 10-06-2014 to ALC, Mapusa at Exh.46 Colly, Copy of reply dated 15-09-2014 by Party II(1) to ALC, Mapusa at Exh. 47, copy of letter dated 10-07-2014 to Registrar of Co-op. Societies, Ponda from Party II(2) at Exh. 48 and copy of letter dated 08-3-2016 to Registrar of Co-op. Societies, Ponda from Party II(2) at Exh. 49.

18. Heard arguments. Learned Advocate Ms. Eruskha Dias argued on behalf of Party and she has also placed on record written submissions on behalf of Party I. Party II(1) and Party II(2) are proceeding ex-parte.
19. I have gone through the records of the case and has duly considered the arguments advanced and also the arguments placed on record and after going through the same, I have given my reasons and findings on the issues which are framed and the same are as follows:

Issue No.1 and 2	In the Affirmative
Issue No. 3	In the Affirmative
Issue No. 4	In the Negative
Issue No. 5	As per the final Order

REASONS

Issue No. 1 and 2

20. Issue No. 1 and 2 are discussed together for the sake of convenience and also as they are interconnected. The Party I has examined and placed on record Affidavit-in-Evidence of Shri Puti Gaonkar, the President of the GAAL Workers' Union which is at Exh.18, Shri Vasudev Gaude, the Helper of the Employer/Party II(1) after which the Party I closed their case and the Party II(1) examined Shri Viraj Dravid, working for Party II(1) as their Supervisor who has only produced the documents relating to the present dispute on behalf of Party II(1) but there is no cross-examination of this witness.
21. Shri Puti Gaonkar has stated in his Affidavit in Evidence the detailed facts of the present dispute and has placed on record various documents from Exh. 19 to Exh. 27 in support of their case. That according to him the workmen involved in the present reference were working in the Factory Canteen established by Party II(1) at Honda, Sattari – Goa and all these workers i.e. the six workmen were continuously in service of Party II(1) in the Canteen since the time of joining in the said canteen and they were continuously working in the said establishment and it was in the month of

January, 2014, the Management of Party II(1) decided to close down the Factory operations and terminated the services of these 6 workmen w.e.f. 10-02-2014. It is their grievance that the other workers working in the same Factory were paid their legal dues such as the retrenchment compensation, gratuity and other dues in addition to ex-gratia amount but these 6 workmen were deprived of the same. In order to decide both these issues, it becomes necessary to look into the cross-examination of this first witness of Party I and the documents produced by him.

22. At the outset, it is seen that the first witness of Party I states in cross that Party I is registered under the Companies Act and he was the President of GAAL Workers' Union since last more than 10 years. He has even stated in cross that Party II(2) is a Society registered under the Maharashtra Cooperative Societies Act as applicable to the State of Goa and according to him, the workmen terminated in the present case were continuously working in the said canteen since the time of their joining. The document at Exh.23 which is a letter dated 07-01-2014 produced by him shows that vide this letter the Party II(2) informed the Party I that the Management has decided to stop giving financial aid to the Society due to the closure of operations of the Company on account of continued losses in the business, which shows that the Management of Party II(1) decided to close down the Factory operations and accordingly the Party I was informed about it.
23. Further, the Party II(2) vide their letter dated 10-07-2014 which is at Exh.48 informed the Registrar of Cooperative Societies, Ponda that since the Party II(1) Company has stopped its manufacturing activities, the Party II(2) has stopped providing canteen facilities to Party II(1) from March, 2014 and because of this the six workmen were deprived of their services by the Party II(1). This witness has also produced the copy of the letter dated 10-06-2014 which is at Exh.19 which is written by Shri Puti Goankar the President of GAAL Workers' Union addressed to the Labour Commissioner that his intervention is necessary because of illegal termination of 6 canteen workmen employed by the Goa Auto Accessories Ltd/ Party II(1) in the canteen managed by the

Company through the Society formed by the Management. It is also mentioned in this letter that all these workmen were engaged by the Party II(1) and were paid by them to work in the Canteen of the Company managed by Party II(2) and they were not paid their legal dues and other dues to which they were entitled. Exh.20 is the letter dated 07-07-2014 written by the Assistant Labour Commissioner, Mapusa to the Party II(1), Managing Director informing them about Exh.19 and asking them to offer their comments. Exh. 22 is also the letter dated 21-08-2014 written by the Chairman and MD of Party II(1) to the Assistant Labour Commissioner, Mapusa stating that the said six workers are not the employees of their Company and to refer the matter to Party II(2). Exh. 24 are the minutes of the meeting held on 16-01-2015 between the Party II(2) and the Party II(1) and the Party I, the contents of which are self-explanatory and it is also mentioned that there was no possibility of any settlement in the said matter. It is mentioned in this document at Exh.24 that the canteen workers were working in the Canteen run by the GAAL Management for their employees, in the Administrative Building of the Company within Factory premises and their wages were paid by the GAAL Management through Consumer Society formed by the Company. The Failure Report of the conciliation proceedings is at Exh. 25 dated 20-02-2015. Exh. 25 are the Minutes of the Meeting before the Labour Commissioner held on 03-03-2014 between the Party I and Party II(1) in the matter of retrenchment of the workmen. Exh. 27 is the copy of the Provident Fund Slip of the workmen Shri Ganesh Parab issued by the Party II(1)/Goa Auto Accessories Ltd. which shows that the Provident Fund is paid to the workmen by Party II(1). Exh. 28 Colly is again the Provident Fund records from the Office of Regional Provident Commissioner, Panaji – Goa which shows that the Provident Fund has been paid by the Party II(2) of their Code.

24. A perusal on Exh.42 Colly which is Memorandum of Settlement dated 14-03-2014 shows that it was agreed by the Party II(1)/the Employer, and the GAAL Workers' Union that 41 workmen on the rolls of the Party II(1) were properly retrenched w.e.f. 10-02-2014 on account of the closure of the manufacturing operations at Honda,

Sattari w.e.f. 10-03-2014 and it is also seen that the Party II(1) had also agreed to pay all the dues to all the said 41 workmen and the legal dues would be paid on or before 15-03-2014 and ex-gratia amount to be paid by 05-04-2014. From the evidence vis-à-vis the documents at various exhibits shows that the wages and other benefits such as uniforms, were given by the Party II(2) and the earned wages were paid by the Party II(2) to the Consumer Society. But the Provident Fund was remitted in the Company Code of the Party II(1) which is evident from the Pay Slip of the Party I workmen which is at Exh. 27 showing a Provident Code number of the workmen of Party II(1) and all the expenses of the canteen were paid by the Party II(1) through the Consumer Society Ltd.

25. The second witness of Party I is Shri Vasudev Gawade who was working in the Canteen situated on the ground floor of the Administrative Building of the Party II(1) and he along with 5 other workmen have been terminated from their services and as such he is involved in the present reference. He states in his Affidavit in Evidence that he was working in the Factory Canteen continuously since their joining in the said Canteen and it is his allegation and grievance that he along with 5 other workmen have been terminated by the Party II(1) without following and complying with the required provisions of the I. D. Act and as such their termination of employment is illegal, unjustified and bad in law. In his cross-examination he has clearly stated that he was appointed by Party II(1) as a Helper in the Canteen and when his appointment dated 22-02-1995 was shown to him, he stated that he was appointed as a Canteen Boy vide said Appointment Letter issued by the Party II(2) and he also admitted that the Appointment Letter is signed by the Chairman of Party II(2), but important to note that he has clarified this by stating that "I add and say that D.B. Narvekar was the Personnel Manager of the Party II(1)". It is seen that there is no denial on this aspect by the Advocate for Party II(1). He even further states in cross that he was not appointed as a Helper as per the Appointment Letter but was appointed as a Canteen Boy as he was doing the work of Helper.

26. He admits that though the Canteen was run by Party II(2), he further stated that the wages

were paid by II(1). He has even stated in cross that the settlement was made with regards to 41 workers, which settlement was signed by GAAL Workers' Union and he is one of the Member of the same Union. He has clarified that all the 6 workmen including him had raised the issue of not considering their case for settlement along with the other members with the Union and the Union stated that the settlement was going on with the Management. He has even stated that the Employer used to issue them Payment Slip every month for the monthly wages paid and there is again no denial on this aspect. Therefore, the testimony of both the witnesses clearly proves that this 6 workmen who have been terminated from their services were working in the Factory Canteen of Party II(1) which Canteen was run by Party II(2) and their wages were paid by the Party II(2). Hence, this goes to show that there existed employer-employee relationship between Party I and Party II(2) from the date of joining of the services as the Party II(1) which is an establishment was running the canteen facility by engaging the agency of Party II(2) Society and as such the Party II(2) is a Society which is an agency of the Party II(1) which was formed and created to run and to provide canteen facilities to the employees of the Party II(1) which is evident from the letter dated 10-02-2014 which is at Exh.48 wherein they have informed the Registrar of Co-operative Societies Ponda that they have stopped giving canteen facilities to the employees of Party II(1) as the Party II(1) has stopped its manufacturing activities and moreover the letter at Exh. 44 which is dated 25-09-2014 shows that Party II(2) requested for cancellation of their registration as they had stopped giving facilities to the employees of the Party II(1). Hence, all this goes to show that the Party I workmen were the employees of the Party II(2) Society and Party I were terminated from their services without providing them retrenchment compensation, notice pay, gratuity and other legal dues as required u/s 25 F and 25 FFF of the I. D. Act and as such their termination of services in my considered opinion is not justified, it is illegal and therefore bad in law.

27. Shri P. Gaonkar has placed reliance on the following Authorities:

1. **Dharangadhara Chemical Works Ltd V/s State of Saurashtra (1957 AIR 264)** wherein the Hon'ble Supreme Court has

observed that *"The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work"*.

2. **Silver Jubilee Tailoring House v/s Chief Inspector of Shops and Establishment (1974) 3 SCC 498**, wherein the Hon'ble Supreme Court has observed that *"35.The degree of control and supervision would be different in different types of business. If an ultimate authority over the worker in the performance of his work resided in the employer so that he was subject to the latter's direction, that would be sufficient"*.
3. **Workmen of Nilgiri Coop. Mkt. Society Ltd. Case (2004) 3 SCC 514** wherein the Hon'ble Apex Court has observed that *"94. There cannot be any doubt whatsoever that where a person is engaged through an intermediary or otherwise for getting a job done, a question may arise as the appointment of an intermediary was merely sham and nominal and rather than camouflage where a definite plea is raised in the Industrial Tribunal or the Labour Court, as the case may be, and in that event, it would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal employer and the workman"*.
4. **Parimal Chandra Raha & Ors. v/s Life Insurance Corporation of India and Ors., 1995 AIR 1666** wherein the Hon'ble Supreme Court has observed that *"29.that it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees by the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the*

Corporation, as pointed out earlier..... The canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."

5. **Secy., Haryana SEB v/s Suresh, (1999) 3 SCC 601** wherein the Hon'ble Supreme Court has observed that *"There is, however, a total unanimity of judicial pronouncements to the effect that in the event the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being perennial in nature, that is to say, in the event of the engagement of labour force through an intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since involvement of the contractor may have its social evil of labour exploitation and thus the contractor ought to go out of the scene bringing together the principal employer and the contract labourers rendering the employment as direct, and resultantly a direct employee."*
6. **The General Manager, Bharat Heavy Electricals Ltd., Ranipet v/s Canteen Workers of BHEL, 2010 SCC OnLine Mad 19**, where the concerned workers were similarly employed in the Canteen premises of the Corporation through a Society has held that: *"Though the second respondent was constituted as an independent co-operative society, in its actual functioning, the society acted as an organ of BHEL. In fact, BHEL was running the Canteen. The second respondent society was only a name lender. The canteen was a statutory canteen in all respects, opened and operated by BHEL."*

Issue No. 3

28. It is grievance of the Party I that the Management while terminating them have not complied with the mandatory provisions of Section 25 F and 25 FFF of the I. D. Act and as such their termination of employment is illegal, unjustified and bad in law and as such they are entitled for the reliefs as prayed and at the same time the Party I has also alleged that the Management has not followed the

principles of natural justice. In order to decide this, it becomes necessary to look into the provisions of both the above sections which reads as follows:

25-F. Conditions precedent to retrenchment of workmen – *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –*

- (a) *The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wage for the period of the notice:*
- (b) *The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months and*
- (c) *Notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).*

25-FFF Compensation to workmen in case of closing down of undertakings - (1) *Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched:*

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F, shall not exceed his average pay for three months.

29. A perusal on both the above provisions clearly states and indicates that it is mandatory on part of the Employer to comply both the above sections and in this case the Party II(1) who is the Employer and the Party II(2) who was running the said canteen have failed to pay the retrenchment compensation, notice pay, gratuity and other legal dues to the workers involved in the present reference. As mentioned while discussing

issue No.1 and 2 that the Party I workmen were continuously in service employed at the Factory canteen as the said canteen was established by the Party II(1) and all the finances for running of the said Factory canteen were provided by the Party II(1) through the Society Party II(2) which is an agency of the Party I Company. As such, it becomes clear and stands proved that running of the canteen facility was made by the Party II(1) for the benefit of the workers for which purpose the Party II(2) came into existence so as to provide them canteen facilities and providing them proper nourishment at a subsidized rate. Therefore the main control or the main Controller is the Party II(1) at whose behest Party II(2) was running the Canteen. Even though in this case both the witnesses of the Party I have not produced any Appointment Letter but, as stated above from the various documents on record it is abundantly clear that the workers involved in the present reference and their services admitted by both the Parties i.e. Party II(1) and Party II(2) which is evident from the documents and also before the conciliation proceedings as vide Exh.48, the Party II(2) had informed vide their letter dated 10-07-2014 which was intimation to the Registrar of Co-operative Society, Ponda that they had stopped giving canteen facilities to the employees of Party II(1) since the Party II(1) had stopped its manufacturing activities which also proves that it is admitted by the Party II(2) that the workmen involved in the present reference were working for them who were appointed in the Factory canteen. Even as stated above, vide Exh.44 the Party II (2) even requested the cancellation of the registration of their Society since they had stopped giving canteen facilities to the employees of Party II(1), therefore, it does not lie in the mouth of Party II(2) that the Applicant were not their employees and were not engaged by them. This proves that there existed an employer-employee relationship between the Party I and Party II(2) from the time of employing these workmen till the date of their termination. The Party II(2) cannot run away from its responsibilities merely because they have closed their establishment now. Hence it is clear that inspite of terminating these workmen from their services, the Party II(2) refused to pay their legal dues through the

Party II(2). The Management failed to pay to the Party I workmen the retrenchment compensation, notice pay, gratuity and other legal dues, therefore, it stands proved that the termination is not legal and unjustified. Even after, the termination of their services when the Party I workmen demanded their legal dues, the party II(1) refused to pay the same through Party II(2) Society which is an agency of the Party II(1) and because of non-payment of the legal dues to the Party I, the industrial dispute came to be raised by the Party I through their Union vide letter dated 10-06-2014 before the Labour Commissioner, Panaji – Goa. It is also seen that the Party II(2) at the time of terminating their services, failed to issue notices to the Party I workmen as no notice was issued to any of the workmen and as such the workmen were entitled for a notice and compensation in accordance with the provisions of Section 25 F.

Issue No. 4

30. The Party II(1) which is an establishment has remained absent throughout and the matter has proceeded ex-parte against Party II(1). In the Written Statement the Party II(1) raised an objection that the present reference is not maintainable as the appropriate Government has not applied its mind before making the reference, for non-joinder of necessary Parties and that there is no employer-employee relationship between Party II(1) and the Applicant workmen, and the GAAL Workers' Union has no locus standi to raise the present dispute on behalf of the workers of Party II(2) and the workers whose names have been mentioned in the Order of Reference were not the members of the Party I Union at any point of time, and lastly that the Party I Union has not authorized the President of the Party I Union to espouse the cause of the workers of the Party II(2).
31. Admittedly, the Party II(1) has not led any evidence on all these objections nor the matter has been argued by Party II(1) but since all these objections are on the law point, I am inclined to give my reasoning on the same inspite of there being no evidence of any nature from the Party II(1).
32. At the outset, it is seen that the present reference came to be referred on account of failure report of the conciliation proceedings before the Labour Commissioner. There is no iota of any pleadings of whatsoever nature as to why the Appropriate Government has not applied its mind before making the reference. There is also an objection from the Party II(1) that the present reference is bad in law for non-joinder of Parties as there does not exist an employer-employee relationship between Party II(1) and the Applicant workmen. On both these objections I have given my reasoning while deciding issue No.1, 2 and 3 that from the testimony of both the witnesses of the Party I vis-à-vis their documents it stands clearly established that the Party I workmen were in continuous service employed by Party II(2) through Party II(1). Therefore, the same are not repeated.
33. It is also the objection that the GAAL Workers' Union have no locus standi to raise dispute on behalf of the workers of Party II(2) and there is also an objection that the workers whose names have been mentioned in the Order of Reference were not the members of the Party I Union at any time. To this it is seen that it was incumbent on the part of the Party II(1) to lead sufficient evidence with documentary proof that these workmen whose names are mentioned in the Order of Reference were not the members of the Party I Union at any time and to this it is seen that the first witness of the Party I Shri Puti Gaonkar who is the President of the GAAL Workers' Union, Honda – Goa has clearly mentioned in his Affidavit-in-Evidence that the workers involved in the present reference were working in the Factory canteen established by the Party II(1) at Honda and all these workers were working continuously since their joining the said canteen. He has also mentioned that the Party I workmen in the reference were working in the Factory canteen established by the Party II(1) at their Factory at Honda and since then they were continuously working in the said establishment and, the Management of Party II(1) decided to close down the Factory operations in the month of January, 2014 and due to the closing down of the Factory operations, the services of these six workmen w.e.f. 10-02-2014.
34. But, it is seen that though the Party I workmen were not the members of the Union as objected by both the Opposite Parties, but

to this it is to be noted that it is a settled law that the workmen can raise their dispute through the Union leader and that is why on their behalf Shri Puti Goankar, the President of GAAL Workers Union is contesting the present reference. But, nevertheless it has been discussed and held above that all these six workmen were working in the Factory canteen established by Party II(1) through the Society Party II(2). The document shows that the wages and the other benefits were given by the Party II(2) and as such since there is no evidence to show that these workmen were the members of the Party I Union, it cannot be said that the reference is bad in law as the employment of the workers by both the Parties i.e. Party II(1) and Party II(2) is admitted.

Issue No. 5

35. Admittedly, in this case the workmen have been terminated from their services without following the due procedure of law and there is also violation of principles of natural justice. There is again absence of notice under sub clause (a) of Section 25 of the I. D. Act and non-compliance of Section 25 F and Section 25 FFF. It is seen that the present workmen/Party I were employed by the Party II(2), a Society which was running the canteen for the Employer but the Employer Code of the Provident Fund is seen to be of Party II(1) because it appears that Party II(2) has no separate code for providing Provident Fund to the employees for which purpose in my considered opinion, it becomes the liability of Party II(2) to pay the retrenchment compensation to the Party I/Workmen and Party II(1) which is already a closed Unit cannot be held liable to provide any compensation to the Party I as the appointment of Party I workmen was done by Party II(2).

Hence, in view of the above reasons, I pass the following Order:

ORDER

- (1) The Party II(2)/M/s GAAL Employees Consumer's Cooperative Society Ltd., Honda, Sattari-Goa is hereby directed to pay retrenchment compensation and gratuity to the Party I workmen from the date of termination of their services.

- (2) No Order as to cost.
(3) Inform the Government accordingly.

Sd/-
(Bela N. Naik)
Presiding Officer
Industrial Tribunal and Labour Court.

Dated: 07-12-2021.
Place: Panaji, Goa.

Notification

No. 28/2/2022-LAB/52

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 12-01-2022 in Appln. No. 01/2019 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 21st January, 2022.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before **Ms. Bela N. Naik, Hon'ble**
Presiding Officer)

Appln. No. 01/2019

Mr. Antao Antonio Francisco,
Costa Vado, Majorda,
Salcete-Goa ... Applicant/Party I.

V/s

M/s Gosalia Shipping Pvt. Ltd.,
Salgaonkar Chambers,
P. O. Box No. 114,
Margao-Goa ... Opponent/Party II.

Applicant/Party I represented by Adv. Shri P. J. Kamat.

Opponent/Party II represented by Advocate S. Mangueshkar.

AWARD

(Delivered on this the 12th day of the month
of January of the year 2022)

This is an application u/s 2-A (2) of the I. D. Act, 1947 filed by the Applicant wherein he prays that an Award may be passed holding that the action of the Party II in terminating his services is non-est, illegal and unjust and that the Party I continues to be in service with full back wages upto the date of his retirement on 10-09-2010, other benefits, continuity in service and consequential benefits.

2. The case of the Applicant in brief is that the Applicant states that he was appointed as a Crane Operator cum Fitter by the Opponent w.e.f. 01-10-1991 and had worked with unblemished and good records and as per his appointment, he was required to work on Board Transhipper vessels owned/chartered by the Opponent Party II or other such vessels of the associate companies and to work on a marine or shore establishment as and when directed. The Opponent has associate Company namely Vishal Gomantak Shipping Pvt. Ltd. (said Company) which operates a transhipper M.V. Sunrise at Panaji Port which is a minor port and though he was appointed by the Opponent, after working with the Opponent for few years, he was deputed to the said Company for work on transshipping on M.V. Sunrise at Panaji Port till 26-10-2001 as a Crane Operator and though he was deputed to work with the said Company, the disciplinary authority remained with the Opponent being the Employer of the Party I.
3. That on 27-10-2001, the Opponent issued a letter terminating his services with immediate effect alleging loss of confidence and the Opponent did not give any advance notice nor paid any compensation as provided u/s 25 of the said Act at the time of issuance of the said letter or any time thereafter and as such this act of the Opponent is illegal and unjustified according to the Party I. The Applicant was deputed to work with the said Company along with the workers of the said Company on transhipper M.V. Sunrise at Panaji who were members of the Marmagao Waterfront Workers' Union (the said Union), the Applicant approached the said Union for taking up his matter. The Union raised the dispute against the said Company along with the dispute of other workers of the said Company who had been refused employment from 17-01-2002 and 18-01-2002 under a bonafide belief that the Applicant was working for the said Company. This dispute of the Applicant along with the dispute of other workers of the said Company were referred for adjudication vide reference dated 12-05-2002 to this Tribunal which was registered as reference No. IT/38/02. This dispute was adjudicated by the Tribunal vide Award dated 30-11-2018 holding that the action of the said Company with regards to the termination of the said workers is illegal and unjust and directed payment of 50% of the back wages with consequential benefits.
4. The Applicant states that since he was an employee of the Opponent, this Tribunal held that the Party I is not entitled for any relief nor the Party I can be the part of the present reference. According to the Applicant since his dispute was referred to the Tribunal under wrong assumption that he was an employee of the said Company, the Hon'ble Tribunal held that Party I cannot be a part of the dispute in IT/38/2002 and his dispute is still alive as he does not accept the same as it was in a wrong forum and as such there is no delay on his part in raising the dispute. The Applicant thereafter, replied to the Opponent vide notice dated 14-03-2019 intimating that their act in terminating his services under the said alleged grounds are illegal and unjustified and he may be re-instated in service with full back wages. The copy was also sent to the Labour Commissioner. The Applicant states that though the Opponent had received the Demand Notice dated 14-03-2019 but his demands were not considered and as such he approached the Labour Commissioner and Conciliation Officer, Government of Goa for intervention in the dispute. The Labour Commissioner sent a notice dated 02-07-2019 to the Opponent for discussion and called upon them to file their comments on the demands of the Party I. The Opponent was duly served and the matter was ended in failure as the settlement was not possible.
5. The Applicant states that as the Opponent did not agree to reinstate him with full back wages, continuity in service and consequential benefits, it was mandatory on the part of the ALC & Conciliation Officer to record failure of discussions and report the same to the Appropriate Government within 14 days of such failure. The Applicant states that the ALC & Conciliation Officer of Panaji took up the matter on 22-07-2019 and is still pending in conciliation and the Conciliation Officer would take much time to make his report to the Appropriate Government which will cause prejudice to the Applicant and as sufficient time has gone after his termination, the Applicant approached this

Tribunal directly under Section 2A(2) of the I. D. Act, 1947 for adjudication. The Applicant further states that he had made an application to the Conciliation Officer of the Appropriate Government on 07-06-2019 for conciliation of the dispute and the first date of discussion on the dispute of the Applicant was fixed on 22-07-2019 and the last date was on 04-10-2019 on which date the Asst. Labour Commissioner & Conciliation Officer, Panaji adjourned the matter further.

6. It is stated that the action of the Opponent in terminating the services of the Applicant w.e.f. 27-10-2001 is illegal, unjust and malafide and that the Applicant is unemployed from the date of his refusal of employment till date and that he has tried his best to secure employment but failed and that the sons of the Applicant are supporting him from the date of his unemployment. The Applicant states that the action of the Opponent in terminating him from the services with effect from 27-10-2001 is non-est, illegal, unjust and malafide.
7. The Written Statement came to be filed by the Opponent denying the case of the Applicant and states that the present application is not maintainable on facts and in law and is barred by law of limitation. That according to them when the proceedings are pending before the Labour Commissioner, the Applicant cannot approach this Tribunal on the same issues and on the same alleged cause of action. The Applicant has not followed the due process of law and he cannot supercede the lawful authorities without exhausting the other remedies in law. That according to them, the Gosalia Shipping Pvt. Ltd. has been struck off from the Registrar of the Companies and as such the said Company is dissolved on 24-05-2019 and as such the present claim is not maintainable against them. The Applicant has belatedly filed the application after 17 years inspite of having received the termination letter dated 27-10-2001 by Gosalia Shipping Pvt. Ltd. and as such the present application is hopelessly barred by law of limitation.
8. It is also the case of the Opponent that the Applicant was terminated from the services for loss of confidence and this Hon'ble Tribunal has rightly held that the Applicant was not the employee of some other Company. He has falsely stated that he was under belief of working for some other Company when he has clearly stated

that he received the termination letter from Party II. The Opponent states that the application made by the Applicant is not maintainable and the same is made only to get benefits from this Tribunal which is not legal. Hence, it is prayed that the application be dismissed.

9. In the Rejoinder at Exhibit 9, the Applicant denied the case put forth by the Opponent in the Written Statement.
10. Based on the above mentioned pleadings, my Learned Predecessor has framed the Issues at Exh. 10 and the same are as follows:

Issues

1. *Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 27-10-2001 is illegal and unjustified?*
2. Whether Party II proves that the application is barred by law of limitation and not maintainable?
3. What Relief? What Order?
11. In the course of the evidence, the Applicant examined himself and has placed on record the copy of the letter of termination dated 27-10-2001 at Exh.13, the copy of Award dated 30-11-2018 in reference No. IT/38/02 at Exh.14, copy of Order of Reference dated 12-05-2002 at Exh.15, copy of Birth Certificate of Applicant/Party I at Exh.16, copy of letter of demand dated 14-03-2019 to Party II at Exh.17, copy of letter dated 07-06/2019 to ALC, Vasco-da-Gama at Exh. 18, copy of letter dated 02-07-2019 by ALC, Panaji at Exh.19 and copy of Noting Sheets of ALC & Conciliation Officer at Exh. 20. During cross-examination certified copy of the Affidavit-in-Evidence along with the deposition in reference No. IT/38/2002 is taken on record and marked at Exh. 21-D Colly.
12. Heard arguments. Learned Advocate Shri P. J. Kamat argued on behalf of the Applicant/Party I and Learned Advocate, Shri S. Mangueshkar has argued on behalf of the Opponent/Party II.
13. I have gone through the records of the case and has duly considered the arguments advanced and I have given my reasons and findings on the issues which are framed and the same are as follows:

Issue No. 1	In the negative.
Issue No. 2	In the negative.
Issue No. 3	As per the final Order.

REASONS**Issue No. 1**

14. The Applicant/Party I, Shri Antao A. Francisco has examined himself by placing on record his Affidavit-in-Evidence which is at Exh. 12 and has mentioned on it the detailed facts of his case and the cause of action which gave rise to the present dispute and in support of his case he has placed on record the documents from Exhibits 13 to 20 and I have perused all these documents in deciding the present case.
15. Admittedly, in this case the Party I states that he was appointed as a Crane Operator by the Opponent in the year 1991 and he was required to work on Board Transhipper Vessels owned by the Opponent/Party II or any other such vessels of the Associate Companies as and when directed by the Party II. It is also an admitted fact that the Opponent has associate Company namely M/s Vishal Gomantak Shipping Company Pvt. Ltd./the said Company who used to operate a transhipper M.V. Sunrise at Panaji Port which is a minor port and according to Party I after some years he was deputed to the said Company by the Opponent to work on the transhipper M. V. Sunrise as a Crane Operator and he worked on this transhipper till 26-10-2001. It is pertinent to note here that the Party I has admitted that though he was deputed to do the work at the said Company but all the disciplinary action and the authority remained with the Opponent being his Employer. This goes to show that the Party I has admitted Party II as its Employer and also admitted the fact that the disciplinary authority remained with the Party II.
16. A perusal on Exh.13 clearly shows that the Opponent has issued a letter of termination to the Applicant by registered A/D post intimating him that his services stands terminated with immediate effect on the grounds of loss of confidence in the Applicant. It is the allegation of the Applicant that this act of the Party II of terminating him is totally illegal and unjustified as no advance notice was served on him nor he was paid any compensation as provided u/s 25-F of the I. D. Act, 1947. It is also true that the Applicant approached the Union namely Marmagao Waterfront Workers' Union which consisted of the workers of the said Company who were also refused employment w.e.f. 17-01-2002 and 18-01-2002 as the Applicant contends that he was under a bonafide belief that he was

working for the said Company which is Vishal Gomantak Shipping Company. On this understanding, the Applicant contends that he joined the Union for taking up his matter since he was deputed to work with the said Company which means according to the Applicant he approached the said Union as he was under a bonafide belief that he was to join the said Union as he was deputed to work at the said Company by the Opponent but it is seen that his dispute along with the dispute of the other workers of the said Company were referred for adjudication vide reference Order No. 28/25-/2002-LAB dated 12-05-2002 to the Hon'ble Industrial Tribunal which reference was registered as IT/38/02 and the Applicant has placed on record the copy of the said Award dated 30-11-2018 which is at Exh.14. Exh.14 makes it very clear that an Award has been passed by my Learned predecessor holding that the action of the Management of M/s Vishal Gomantak Shipping Company in terminating the services of the workmen whose names were mentioned at Sr. No. 2 of Part A and B were held to be illegal and unjustified except that of the Party I/Applicant, Shri Antonio A. Francisco which means that by this Award the termination of the present Applicant was not held to be illegal nor unjustified and the Tribunal also held that the Party I was not entitled for any reliefs nor he can be a part of the said reference. Exh. 14 which is an Award passed in reference No. IT/38/02 was between the workmen represented by the Marmagao Waterfront and the said Company which is Vishal Gomantak Shipping Company. This Award stands binding on all the Parties to the said Award including the present Applicant as the same has not been set aside by the Higher Courts till date. The contention of the Applicant that he was under wrong assumption that he was an employee of the said Company/Vishal Gomantak is highly difficult to be believed as he was only deputed to work at the said Company by the Opponent and therefore my predecessor held that the Applicant was not entitled for any reliefs and he cannot be a part of the dispute referred in IT/38/02 which order remains in force as on today.

17. It is further seen that having lost the battle by the Applicant in the said IT/38/02, he gave a notice dated 14-03-2019 to Party II by registered A/D post which is at Exh.17 intimating them that his termination is illegal and unjustified as he had not committed any misconduct for losing confidence and demanded that he may

be re-instated in service with full back wages and other reliefs. The Opponent received Exh.17 but did not consider his demands and as such the Applicant approached the Labour Commissioner and the Conciliation Officer, Government of Goa at Panaji for intervention in the present dispute. From the records it is seen that this conciliation has failed and he has placed on record the copy of the letter dated 02-07-2019 made to ALC which is at Exh.19 and copy of the noting sheets of ALC and Conciliation Officer is at Exh. 20 which shows that the conciliation failed and as such he approached this Tribunal directly u/s 2-A (2) of the I. D. Act, 1947 for adjudication of the present dispute.

18. Now, coming to the cross-examination of the Applicant wherein he has miserably failed to answer to all the relevant questions put to him by the Advocate for the Opponent. Though according to the Applicant, he was appointed as a Crane Operator cum Fitter by the Opponent w.e.f. 01-10-1991, he admitted in cross that he does not have any documents to show that he was appointed to the said post from 01-10-1991 which fact has damaged his own case and in the absence of such Appointment Letter from the Applicant it is very difficult to believe the same. Further, according to him after working with the Opponent for some years, he was deputed to the said Company for work on the Transhipper M. V. Sunrise but he failed to mention in his Affidavit-in-Evidence and in his application the date on which he was deputed and at the same time he states that he worked on the said Transhipper till 26-10-2001 as a Crane Operator and there are no documents supporting this contention as there is no document showing the date of his deputation and that he worked on the said Transhipper till 26-10-2001.
19. He has admitted in cross that from 26-10-2001 till the filing of the present application he did not initiate any proceedings against the Opponent. Therefore one does not know from 26-10-2001 till the filing of the present application, why no effective and proper steps were taken by him after his termination.
20. Further, he admits that he is not aware if his proceedings filed before the Labour Commissioner have been completed or not, which fact is also very difficult to believe as it cannot be accepted that a person whose proceedings are pending before a concerned authority relating to his job is not within his

knowledge and as such this goes to show that the Applicant does not wish to disclose the true facts before this Court and moreover, in his application he has clearly mentioned that the ALC and the Conciliation Officer took up his matter on 22-07-2019 and it is still pending in conciliation and according to him as the Conciliation Officer would take more time to make his report to the Appropriate Government which would cause prejudice to him and as lot of time went after his termination, he has approached this Tribunal with the present application, only shows that the Applicant himself has not complied with nor waited for the correct procedure and approached this Tribunal and that too by suppressing the material facts in his cross-examination.

21. He even further admits in cross that he is not aware if his proceedings filed before the Labour Commissioner have been completed. He has admitted about the refusal of his prayers in the reference IT/38/2002 filed by the Marmagao Waterfront Workers' Union along with him against the said Company. Further, though he admits that he had personally filed his Affidavit-in-Evidence in the said reference but he does not remember if he had deposed in the said reference No. IT/38/02 which also goes to show that he wants to suppress the relevant facts to this Tribunal and above all he has admitted further "I am not having any Appointment Letter issued by any Company including Party II" therefore, this goes to show that he himself is not in possession of any documents relating to his appointment and appears to have filed the present application in air with no support of any cogent documents.
22. Further, he changes his version and states in cross that he had deposed in reference No. IT/38/02 that Shri Anil V. Salgaonkar is a Director of the said Company and he also further deposed that he was last working with this Company on their Transhipper Vessel "M. V. Sunrise". The testimony of the Applicant is inconsistent and shaky in nature because when it was asked to him in cross that he had stated that lastly he worked for the said Company/Vishal Gomantak and that he stated that lastly for the Opponent and which of his statement was correct to which he replied that both his statements are correct. This answer given by the Applicant cannot be accepted by any stretch of imagination as no worker can work at the same time on two different fields.

That according to him Shri Anil Salgaonkar was the owner of the transshipping vessel M. V. Sunrise and he has not produced any Salary Slips issued by the Opponent as according to him no Salary Slips were issued to him at any time. Therefore, the entire case put forth by the Applicant is without the support of any documents.

23. Further, he has admitted in cross that he did not challenge Exh.13 which is a letter dated 27-10-2001 which was issued to him by the Opponent terminating his services with immediate effect on the grounds of loss of confidence. He even admits further by stating that though he was not given any advance notice nor he was paid any compensation, still he did not challenge the same before any authority. There is no justification nor any explanation to this statement of the Applicant. He does not remember in which year he had joined the said Union i.e. Marmagao Waterfront Workers' Union nor he remembers the year in which he approached the said Union to take up his matter. Further, in his cross-examination the Applicant stated that his proceedings before the Labour Commissioner are not completed and it is only delayed and his inquiry before the Labour Commissioner is still pending. Further, when it was asked to him for what purpose he filed the present application, he stated that he filed this case alleging that the case before the Labour Commissioner is still pending and to avoid the further delay, he filed the present case. He admitted that he is aware of the Rules before approaching this Tribunal and the Inquiry before the Labour Commissioner has to be completed and in this case he has admitted that the said inquiry before the Labour Commissioner is not yet completed and further he admitted that he did not file any letter or reference before the ALC for conclusion of the inquiry within 14 days. He has admitted his entire deposition in reference No. IT/38/2002 which was marked at Exh. 21-D Colly (produced in cross). Hence, all this goes to show that the Applicant has approached this Court without following the due procedure of law as his inquiry before the Labour Commissioner is not completed and merely because an Award was passed in IT/38/2002 by my Learned Predecessor on 30-11-2018 rejecting the claim of the Applicant, he has approached this Tribunal directly

without the support of any documents and that too when his proceedings are pending before the Labour Commissioner on the same issue and on the same cause of action, the Party I has not exhausted the an the employee of the Opponent as according to the Opponent the Gosalia Shipping Pvt. Ltd. has been struck off from the Registrar of Companies and this Company is dissolved by the Registrar of Companies on 24-05-2019 which fact is not denied by the Applicant. The findings of my Learned predecessor in reference No. IT/38/2002 is binding on the Parties as on today. Hence, in view of the above reasons, issue No.1 is answered in the negative.

Issue No. 2

18. It is the objection raised by the Opponent that the present application is bad in law, not maintainable and it is barred by law of limitation as the same has been filed after a long delay i.e. after a lapse of 17 years. To this, it is seen that there is no dispute that the services of Party I were terminated vide letter dated 27-10-2001/Exh.13 which date is within the knowledge of the Applicant. The Party I has also stated that the said Company terminated it employees w.e.f. 17-01-2002 and 18-01-2002. The inquiry proceedings of the Applicant are still pending before the Labour Commissioner and the Award passed in reference No. IT/38/2002 by my Learned predecessor is dated 30-11-2018 which is in force as on today. The present application is filed on 09-10-2019 after a long delay of more than 15 years from the date of his termination and there is no dispute to that but Learned Advocate, Shri P. J. Kamat for the Applicant has placed reliance on the following authorities:
1. **Prabhakar v/s Joint Director, Sericulture Department and another (2015 (147) FLR 341) (Supreme Court)** wherein the Hon'ble Apex Court has held that *the law of limitation does not apply to industrial disputes and to the proceedings under the Industrial Disputes Act as under the Industrial Disputes Act no period of limitation is prescribed. This is settled position of law as decided by the Hon'ble Apex Court in series of Judgements.* Hence, in view of the above authority, it cannot be held that the present application is barred by law of limitation and accordingly issue No. 2 is answered in the negative.

19. The Applicant in this case has failed to prove his case and as such he is not entitled for any reliefs as prayed and accordingly, I pass the following Order:

Order

The application u/s 2-A (2) of the I. D. Act, 1947 filed by the Applicant stands dismissed.

Sd/-

(BELA N. NAIK),

Presiding Officer, Industrial
Tribunal and Labour Court.

Dated: 12-01-2022.

Place: Panaji, Goa.

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Department of Personnel

Order

No. 7/24/2019-PER/176

Read: 1. O. M. No. 18/16/2021-EO(MM-I) dated 06-01-2022.

2. Letter No. 14046/17/2016.UTS-I dated 12-01-2022.

The Governor of Goa is pleased to relieve Shri Sanjay Kumar, IAS (AGMUT:2008) Secretary (Revenue) from the State Administration with effect from 24-01-2022 (a.n.) to join the new posting as Deputy Secretary in the Department of Investment & Public Asset Management, Delhi under the Central Staffing Scheme.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).

Porvorim, 24th January, 2022.

Order

No. 6/11/2019-PER/214

Read: 1. Order No. 6/11/2019-PER/3385 dated 30-12-2021.

Approval of the Government is accorded to draw the salary of below mentioned officers promoted to Senior Scale of Goa Civil Service vide order read in the preamble, from the date of their joining/acceptance of the order of promotion in relaxation to F.R. 17 (1):

Sr. No.	Name of the officer	Salary to be drawn against the post of
1	2	3
1.	Smt. Maya Pednekar	Additional Director of Vigilance – I.
2.	Dr. Geeta Suresh Nagvenkar	Commissioner of Departmental Inquiries.
3.	Shri Clen Madeira	Leave & Training Reserve.
4.	Shri Rohit Ashok Kadam	Joint Secretary/Additional Secretary to Government.
5.	Smt. Neha Amey Naik Panvelkar	Leave & Training Reserve.
6.	Shri Kapil Chandrakant Phadte	Director of Science & Technology.
7.	Shri Kedar Ashok Naik	Joint Secretary/Additional Secretary to Government.
8.	Shri Prasad Gurudas Volvoikar	Leave & Training Reserve, South Goa.
9.	Shri Deepesh Narayan Priolkar	Joint Secretary/Additional Secretary to Government.
10.	Shri Ajay Ramchandra Gaude	Joint Secretary/Additional Secretary to Government.
11.	Smt. Sangeeta S. Naik	Leave & Training Reserve.

1	2	3
12.	Shri Pundalik V. Khorjuekar	Additional Collector-III, South Goa.
13.	Shri Sudin A. Natu	Leave & Training Reserve.
14.	Shri Vishant S. Naik Gaunekar	Joint Secretary to Chief Minister.
15.	Shri Shashank V. Thakur	Leave & Training Reserve.
16.	Shri Tushar Halarnkar	Director (Admn.), Department of Higher Education.
17.	Shri Manuel P. Barreto	Leave & Training Reserve, South Goa.
18.	Shri Shripad Arlekar	Leave & Training Reserve.
19.	Shri Chandresh C. Kunkalkar	Leave & Training Reserve.
20.	Shri Vishal C. Kundaikar	Leave & Training Reserve.

The officer at Sr. No. 14 shall not be entitled for deputation allowance.

By order and in the name of the Governor of Goa.

Meghana Shetgaonkar, Joint Secretary (Personnel).

Porvorim, 28th January, 2021.

Order

No. 6/11/2019-PER/262

Read: Order No. 6/11/2019-PER/214 dated 28-01-2021.

The date of issue of order read at preamble shall be read as "28-01-2022" instead of 28-01-2021".

By order and in the name of the Governor of Goa.

Meghana Shetgaonkar, Joint Secretary (Personnel).

Porvorim, 2nd February, 2022.

Order

No. 7/3/2019-PER/229

Read: 1. Order No. 14020/07/2021-UTS-I dated 07-01-2022.

2. Notification No. 7/3/2019-PER/2871 dated 15-11-2021.

In pursuance of order read in the preamble, the Governor of Goa is pleased to appoint Shri Puneet Kumar Goel, IAS (AGMUT:1991), as Chief Secretary, Goa, w.e.f. 01-02-2022.

Shri Puneet Kumar Goel, IAS, shall hold the charge of the following departments:-

Sr. No	Name & Designation	Department
1.	Shri Puneet Kumar Goel, IAS (1991) Chief Secretary	1. Vigilance/Chief Vigilance Officer. 2. Home. 3. Personnel. 4. Finance. 5. Forest. 6. Planning & Statistics. 7. Town & Country Planning.

1	2	3
		8. ARD.
		9. PWD.
		10. Civil Aviation.
		11. Mines and Geology.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).

Porvorim, 31st January, 2022.

Order

No. 6/11/2020-PER/241

Ref: 1) Order No. 6/11/2010-PER(part)/2209A dated 03-09-2021.

2) Order No. 6/11/2010-PER(part)/3382 dated 30-12-2021.

Sanction of the Government is hereby conveyed for appointment of Shri Brijesh Manerkar, Secretary, Goa State Election Commission, as Nodal Officer for Complaint Monitoring and C-Vigil in connection

with General Elections to Goa State Legislative Assembly, 2022.

Shri Manerkar shall stand relieved with immediate effect to join on full time basis, in the office of Chief Electoral Officer.

Shri Mahadev Araundekar, Secretary, Goa State Information Commission shall hold the charge of the post of Secretary, Goa State Election Commission in addition to his own duties during the election process till Shri Manerkar resumes the duty.

Shri Brijesh Manerkar shall continue to draw the salary from the post held by him prior to his appointment as Nodal Officer.

By order and in the name of the Governor of Goa.

Vishal C. Kundaikar, Under Secretary (Personnel-I).

Porvorim, 1st February, 2022.

Department of Public Health

Order

No. 38-36-2021-I-PHD/2470-A

Government is pleased to constitute a Jan Arogya Samiti Committee at AB-HWC for the RMD Usgao under Primary Health Centre, Dharbandora comprising of following:-

1. Sarpanch of the Gram Panchayat	— Chairperson.
2. Health Officer/Medical Officer I/C	— Member Secretary.
3. Medical Officer/Ayush MO of PHC/CHC	— Member.
4. Senior Staff Nurse/LHV/ANM of PHC/Pharmacist	— Member.
5. Chairperson of Janpad Panchayat's Health Sub-Committee/Panchayat Secretary	— Member.
6. CDPO-Women & Child Department	— Member.
7. Principal Chief Engineer, Public Works Department (Including Electrical and Mechanical)	— Member.
8. Principal/Headmaster of the Sarvodaya High School, Usgao	— Member.
9. Santosh Gad	— Member.
10. Achyut Usgaonkar	— Member.

Terms of reference of the said Committee shall be as under:-

- ◆ Meetings: The JAS will meet at least once every month on a fixed day. The member will organize the meeting, and will communicate the day, date of the meeting, with the list of agenda items to all members, at least seven days in advance. The essential quorum for the meeting will be 50% of the members of the Committee.
- ◆ Minutes of every meeting of JAS, with a written account of activities undertaken and expenditures made in previous month, would be documented. All details of the discussion shall be duly recorded along with signature of all participating members and communicated to all the members.
- ◆ The Committee shall maintain the register of record of proceedings of the JAS Committee meetings and Financial Account Register.
- ◆ Roles and responsibilities of JAS Committee will be to enable quality service delivery at AB-HWC, to facilitate Health Promotion efforts, to catalyze Grievance Redressal and to facilitate community feedback of services.
- ◆ United Funds: Under Ayushman Bharat, an annual untied funds is provided @ Rs. 50,000 for SHC level AB-HWCs and Rs. 1,75,000 for PHC level AB-HWCs. Consider and approve financial proposals for united funds. The annual audit of the untied fund of the AB-HWC will have to be undertaken, according to the guidelines issued by the State Government.

- ◆ JAB Committee shall review income & expenditure statements, consider the Annual budget and the annual action plan of the committee modification as the Committee may think fit.

By order and in the name of the Governor of Goa.

Gautami Parmekar, Under Secretary (Health-II).

Porvorim, 12th November, 2021.

Corrigendum

No. 38-36-2021-I-PHD/184

Read: Order No. 38/36/2021-I/PHD/2476 dated 12-11-2021.

In the 2nd line of 1st para of the Government Order read at preamble, the words appearing as "Varca Orlim" shall be corrected to read as "Velim".

Rest of the content remains unchanged.

By order and in the name of the Governor of Goa.

Gautami Parmekar, Under Secretary (Health-II).

Porvorim, 31st January, 2022.

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